BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

VIVIAN SULAIMON Claimant VS.	
WOODLAND HEALTH CENTER	Docket No. 192,021
Respondent AND	
KANSAS HEALTH CARE ASSOCIATION Insurance Carrier	
AND	
KANSAS WORKERS COMPENSATION FUND	'

ORDER

Respondent appeals from a Preliminary Hearing Order entered by Administrative Law Judge James R. Ward on June 27, 1995. The Order grants claimant's request for temporary total disability and medical benefits.

ISSUES

Respondent contends the Order should be reversed because it is based solely upon medical records which were not attached to the Application for Preliminary Hearing or provided at the time of the benefit review conference.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds and concludes as follows:

- (1) On appeal from preliminary hearing orders, the Appeals Board's jurisdiction is limited to review of jurisdictional findings listed in K.S.A. 44-534a and allegations that the Administrative Law Judge otherwise exceeded his jurisdiction. K.S.A. 44-551.
- (2) The decision by the Administrative Law Judge to award benefits based upon medical records not attached to the Application for Preliminary Hearing Order or produced at the time of the benefit review conference does not exceed the jurisdiction of the Administrative Law Judge.

By amendments effective July 1, 1993, any party requesting a preliminary hearing must attach thereto ". . . copies of medical reports or other evidence which the party

intends to produce as exhibits supporting the change of benefits . . ." K.S.A 44-534a. Respondent argues that the legislature intended to prohibit the introduction into evidence of any medical reports not attached to the application of preliminary hearing or exchanged at time of benefit review conference. Respondent also argues that if a party is allowed to introduce additional records at the time of the preliminary hearing, no party will be forthcoming with their evidence.

The Appeals Board concludes the cited statute was not intended as an absolute bar to the admission of records not attached to the application or exchanged at benefit review. Had the legislature intended an absolute exclusion of such records from evidence, additional language could have easily so indicated. On the other hand, the legislature clearly did intend for the parties to provide medical records to the opposing party. The Administrative Law Judge certainly would have the authority to enforce that intention by excluding records. The Administrative Law Judge, likewise, has the authority to admit the records where factors favoring admission of the records outweigh the policy of prior disclosure. Because the Administrative Law Judge has this discretion, the decision in this case does not exceed the Administrative Law Judge's jurisdiction.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order issued by Administrative Law Judge James R. Ward dated June 27, 1995, remains in effect as originally entered.

IT IS SO ORD	ERED.	
Dated this	_ day of September, 1995.	y of September, 1995.
	BOARD MEMBER	BOARD MEMBER
	BOARD MEMBER	BOARD MEMBER
	BOARD MEMBER	BOARD MEMBER

c: George H. Pearson, Topeka, Kansas Kip A. Kubin, Overland Park, Kansas Derek Shafer, Topeka, Kansas James R. Ward, Administrative Law Judge Philip S. Harness, Director